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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,979	06/26/2003	Kirkland W. Vogt	5014A	6442

7590 12/30/2005

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EXAMINER

GOFMAN, ANNA

ART UNIT PAPER NUMBER

1771

DATE MAILED: 12/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/606,979	Applicant(s) VOGT ET AL.	
	Examiner Anna Gofman	Art Unit 1771	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 December 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 1, 17-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>02/03/05</u> . | 6) <input type="checkbox"/> Other: _____  |

***Election/Restrictions***

1. Claims 1 and 17-21 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected claims, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on September 23, 2005.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 2-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 recites the limitation, "A textile, woven fabric-elastomer composite comprised of a woven fabric having a technical face and a technical back, said woven fabric having been coated on at least one side with an elastomer composition, said elastomer composition being partially incorporated into said fabric to create a seamless transition between said fabric and said elastomer." The phrase "technical face and a technical back" is unclear. The term "technical" is also recited in claims 7 and 10 and add to the indefiniteness. It is further unclear what "front" and "back" imply. Applicant does not specify any other material contacting said front and back sides. Examiner will consider said front or back sides of the fabric to be surface or sides.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 2-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Lovingood (US 2003/0190853).

Lovingood teach a woven fabric comprising a stretchable material. The woven fabric includes natural fibers, such as silk, wool, cotton, or rayon, preferably cotton or rayon. Since, satin is known in the art to be made from silk or rayon, with the presence of rayon in the invention of Lovingood, the limitation of claim 6 is inherently met. The material has a weight of in the range of about 4 to 8.5 ounces, with about 30 to 100 ends per inch and about 30 to 65 picks per inch (pg.3 par. 0029-0030). In a comparative sample, the warp has a cotton count of 25/1 and a filling having a cotton count of 19/1 (pg.4 par.0039). The surface of the fabric includes various treatments such as napping and calendering (pg.3 par. 0032).

The following claims are product by process claims:

Claim 2 recites "a textile woven fabric-elastomer composite... said elastomer composition being partially incorporated into said fabric to create a seamless transition

between said fabric and said elastomer.” Said elastomer being partially incorporated into said fabric to create a seamless transition is a process limitation.

Claim 7 states, “The fabric-elastomer composite of claim 2 wherein said woven fabric has been napped on its technical face prior to being coated with said elastomer composition.” Said woven fabric being napped on its technical face prior to being coated is a process limitation.

Finally, claim 8 recites, “The fabric-elastomer composite of claim 7 wherein said woven fabric has been calendered after being napped and prior to being coated with said elastomer composition.” Said woven fabric being calendered after being napped and prior to being coated, is a process limitation.

Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985)

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. In addition to the references provided by Applicant, the follow documents are considered pertinent to Applicant's invention:

Okamoto et al. (US 3,865,678) teach a suede-like raised woven fabric, but does not teach elastomer yarns comprising pick and end counts.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anna Gofman whose telephone number is (571) 272-7419. The examiner can normally be reached on Mon.-Fri. 8:30-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anna Gofman  
Examiner  
Art Unit 1771

AG

*Ula Ruddock*  
**ULA RUDDOCK**  
**PRIMARY EXAMINER**